SSM's (NL) Comments on MMS' regulatory approach to Safety and Environmental Management Systems

1. *Which of the three identified approaches do you consider most responsive to MMS's stated goals and why?*

MMS goals are:
1. improve upon current regulatory approach to SEMS to further minimise incidents and damage
2. improve efficiency of current regulatory system by making it more responsive to innovative approaches and technological and environmental changes.

Considering the three alternatives you mention in your paper the first two alternatives imply the continuation of specific prescriptive safety- and environmental regulations and requirements and is therefore in conflict with the principle of a SEMS, namely the freedom of a company to choose its own adequate and safe way to do things and its responsibility to demonstrate that it is adequate and safe towards its employees, its management and government bodies like the MMS.
In my opinion only the third alternative is an adequate approach whereby you actively stimulate the companies to consider themselves as responsible for safety and environment.
In the Netherlands we started with safety management systems for the organisation as a whole (based on international accepted quality management system guidelines (such as ISO-9000 and others) in combination with safety cases per individual platform). In the safety case the company has to demonstrate that all risks are identified, analysed and dealt with and that the SEMS is adequate to deal with the specific risks associated with the specific location and circumstances. After the introduction of this policy we saw a continuous decline in number of incidents.
Our own supervisory work changed significantly. The focus is now on: a. review and assessment of the system (on paper) and safety case, b. discussion with the company on the findings which always lead to changes, c. verification (a combination of physical checks *and* interviews) on the installations (check if they practise what they preach) whereby their safety management system and safety case are used by us as our reference.

2. *Are there other safety and environmental management systems or programmes that MMS should review?*

Yes, in our opinion
- ISO 9000-2000 quality management standard being used for managing safety and health;
- ISO 14000 series for environmental management standard being used for environmental aspect and or safety and health;
- OHSAS 18001 (being converted into an ISO standard, probably ISO 18001 which will be ready next year).

We do not have a specific preference. They are all adequate for use in our industry, as long as they are process based and focussed on continuous improvement.

3. *Does the subpart O model using audits, informal employee interviews, and testing provide a suitable model for verifying the implementation of a performance based safety and*

environmental management program? Are there alternative approaches to the subpart O model that the MMS could consider?

What is missing in the paragraph 'Enforcement of SEMS requirement', is the review/assessment of the written SEMS and the discussion with the company about the findings of your assessment of their system and the modifications that will result from the assessment and discussion. It is very important that they consider all their processes and go through them step by step, focussing on safety/environmental critical steps and formulating the necessary controls, and put that down on paper. It is then up to the MMS to select a process and some elements (critical step) thereof and verify if they are doing what they say on paper.

4. *Should MMS or a third party verify that a performance based safety and environmental management program is working. Should audits be periodic or should they be triggered by events or indicators?*

As already stated in answers to questions 1 and 3 verification is very important. If verification is carried out by a third party then in our experience your own verification is still necessary but the frequency can be reduced as you become more satisfied with the quality of the third party verification. We believe in risk based periodic verifications (not exactly the same as an audit) combined with incidental verifications triggered by certain events.

5. *Should MMS review the SEMS plan, reviewed and approve the SEMS plan, or have an independent third party verify, review and approve the SEMS plan?*

Our answer has already been given under the answers to questions 1, 3 and 4. MMS should review/assess and verify. These two activities are the main pillars of our way of supervising/enforcing. We do not approve the SEMS plan to avoid taking over the responsibility of the company for the safety of its employees. After the assessment we sent the companies a letter stating that at this moment we have no further comments. As a result of our verifications on the platforms we regularly advise companies to adjust their SEMS plan because in practice it did not adequately cover a particular risk. That would be impossible if the plan was already approved. It is our experience that the added value of a third party review and approval is very limited.

6. *Should SEMS plans be in addition to the current prescriptive regulations or should the SEMS plan be in lieu of certain prescriptive regulations?*

The latter is in our opinion the only viable option. The prescriptive legislation that we kept is only the part that defines our requirements for a SEMS plan. All other prescriptive articles were deleted when we introduced SEMS regulations.

7. *What standards should a SEMS plan include to provide consistent and credible approaches to offshore operational safety and environmental performance. Would these standards or guidelines be domestic or international. Would these be accepted industry best practices or internal company policies and procedures?*

First of all we require that SEMS plans are based on internationally acknowledged standards for the management of quality, safety, health or environment with the main objective of continuous improvement. This means that companies should strive for improving safety, health and environment year after year. Therefore standards for engineering or operations should also be reviewed.
The best operational and/or engineering standards are those that are the result of cooperation between companies, unions, customers, suppliers, expert centres (and sometimes government representatives). Our national standardisation organisation and that of many other European countries work in such a way. The ISO works with representatives of these national standardisation organisations and have produced many excellent standards now being used by the industry. It is obvious that company standards of large multinationals such as Exxon, BP or Shell are often of a better quality than those of a small national company.
Branch organisations such as UKOOA (UK), OLF (Norway) and NOGEPA (NL) are also making standards, and very often they ask for government input.
Our perception of API standards is that we are reluctant in accepting them because of the limited variety in stakeholders that are involved in the process of making them (often only the manufacturers).
At present we see a development whereby multinational oil companies want to work towards global or regional standards instead of domestic or in-company ones. OGP standards are a good example thereof.

When we are assessing/reviewing SEMS-plans we also review the standards that have been used and we will bring it up in the discussions if we think that there are better standards available and ask them how they see that in light of continuous improvement.

8. What criteria should the MMS use to determine whether an operator has a viable SEMS plan?

We look at the following criteria:

1. are all elements of the SEMS-standard that is being used (ISO9000-2000, ISO14000, OHSAS 18001) covered and put together in a comprehensive and consistent format.
2. The following elements are being assessed:
    a. Policy
    b. Organisation
    c. Planning
    d. Implementation
    e. Responsibilities, authorities and means
    f. Integration of health and safety in a management system
    g. Communication
    h. Documentation
    i. Safety and health expertise
    j. Measuring performance
    k. Evaluation of the elements
    l. Audits
    m. Overall evaluation of the system
3. The system and its elements are being assessed with the use of questionnaires resulting in an individual score per organisation.

9. Is API RP 75 a sufficient model for addressing all the factors with offshore industry practices? If not, please provide the MMS with your suggestions on an appropriate model

The elements of the API RP 75, as mentioned on page 29277 and 29278 of your paper, do correspond with the elements of both standards mentioned in my answer to question 2; ISO 14000 (for the environment) and OHSAS/ISO 18001 (for safety and health). These two standards refer to two other ISO standards, one for hazard identification and risk assessment (ISO 17776:2000) and one for the carrying out of audits (ISO 19011:2002). Both of these are being used by ourselves when assessing the management systems.

10. Are there existing programmes or initiatives industry is currently using that can further our ability to verify and track environmental compliance such as ISO 14001:2004; Sempcheck, European Eco-management and audit scheme or Global management initiative.?

The government of the Netherlands and the oil and gas industry agreed in June 1995 to an environmental policy aimed at the realisation of the Integrated Environmental Target Plan with respect to the exploration and production activities of the oil and gas industry in the Netherlands, including the Dutch section of the Continental Shelf. The basic principles for the agreements is stated in a Declaration of Intent or the so-called Environmental Covenant (see attachment).

11. How can MMS improve its current regulatory model to incorporate environmental performance measurement systems?

The Oil and gas industry are committed to having an environmental care system. An environmental care system is a management tool for implementing the company's environmental policies and will enable enterprises to manage and reduce emissions more effectively.
For reliable information the environmental data should be based on an emission measurement and registration (M&R) system. The industry also committed to implement an adequate functioning M&R system.

12. What are the most appropriate compliance measures that are responsive to our broad environmental performance standards referred to in "the Regulatory Program", section above?

Legislation and enforcement are the instruments to preventing 'out of compliance'. The Environmental Covenant is a tool to implement Compliance Assistance (CA). Through CA we can stimulate and 'enforce' by voluntary compliance.

13. Should MMS consider developing a 'pilot programme' to assess an alternative compliance programme for outstanding operators
14. What measure(s) should we use to determine who is allowed to participate?
15. How should MMS judge prospective "pilot program" applicants? Should an applicant be required to submit a complete SEMS program or plan to MMS for evaluation? Should MMS approve such a program?

16. *Should a pilot program be for a fixed period of time? How long?*
17. *Should performance issues trigger a premature end to an operator's participation in a pilot program?*
18. *What measures should be considered?*
19. *What type of MMS regulatory regime do you recommend for companies in a pilot programme?*

Combined answer:

This is difficult to answer without knowing the situation in the US. Here in the Netherlands all operators are screened by ourselves before we advise the Minister to grant that operator an exploration or production license. One of the screening criteria is the demonstration by the new company that they have a working HSE management system in place (elsewhere).
For existing companies (that of course already have a HSE management system) when we are planning our supervisory activities we make sure that all companies do get our attention but some companies get more than others depending on their 'compliance history', efforts, size, activities, etc.
It is hard to imagine that there are operators that do not have a HSE management system and if they all have one they (the elements) should all be part of your program. We introduced obligatory HSE management systems back in 1995 (EU Directive 92/91) and it took about 4 to 5 years for the companies to come up with systems that sufficiently complied with ISO 9000:2000 (or its predecessors). The work should be done by the companies and their HSE management systems should suit their size, culture and activities. Our role during these 4 to 5 years was to stimulate and challenge the companies by putting forward sharp questions and lessons we have learned from other (better performing) companies, i.e. make use of best practices. The introduction in 1995 of the legal obligation for companies to have (and use) HSE management systems (and safety cases per installation) went along with skipping a massive amount of prescriptive articles in the existing legislation.
It is obvious that the focus of our own supervisory work changed significantly (see also answer to question 1) and that also meant a significant change in the way inspectors work and communicate with the companies. That is probably the most difficult change.
It also means that if you allow them to design and use their own management systems you should not confront them with prescriptive articles of your legislation because the two can't be valid simultaneously. However if your inspectors do see unsafe acts or situations and should intervene then in most cases they can refer to the company's own HSE management system.

20. *What prescriptive regulations and permitting requirements should be excluded from this alternative regulatory program?*

A good question but you should ask your own operators (no doubt that you already have done so). Our experience when we were looking at our own (old) legislation together with the industry was that there were two categories of prescriptive articles in it. The obvious superfluous ones (we got rid of them immediately) and those that covered significant risks. We got rid of them too but under the condition that the issue was mentioned and dealt with (i.e. description of the relevant controls) within the HSE management system or HSE (safety) case.

21. What advantages does a SEMS regulatory approach have for companies compared to a prescriptive approach?

The main advantage for the companies is that they can manage HSE in a similar manner to all other topics in their company. They can integrate it in their existing management system. The second advantage is that controls can be chosen on the basis of their own situation (organisation, size, culture, etc.). To motivate their personnel it is more convincing to have measures fit for the situation than obligatory measures not so fit or not fit at all for their situation.

22. What disadvantage does a SEMS regulatory approach have for companies as compared to a prescriptive approach?

None for companies that do not have such systems already in place. For companies that do not have such a system in place it means a great amount of work to get it, not just for the writing but also in communicating and convincing employees and middle management.

23. Should the SEMS pilot program include only four elements as mentioned above or should it be for all 12 elements?

If it is not based on all 12 elements you can't speak of a system and it won't work. The aforementioned international standards are made by experts from all kinds or organisations: trade organisations, unions, individual companies, governmental representatives and often scientists from universities or research centres, in other words 'supported' and accepted by a wide variety of stakeholders.